

STATE OF MICHIGAN
COURT OF APPEALS

In re A. COX, Minor.

UNPUBLISHED

May 21, 2015

No. 324490

Kent Circuit Court

Family Division

LC No. 13-053318-NA

Before: BECKERING, P.J., and MARKEY and SHAPIRO, JJ.

PER CURIAM.

Respondent-mother appeals by right the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), (3)(g) (failure to provide proper care and custody), and (3)(l) (parental rights to other children previously involuntarily terminated).¹ We affirm.

Respondent argues that the trial court erroneously found statutory grounds to terminate her parental rights to the minor child. “In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met.” *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). “We review the trial court’s determination for clear error.” *Id.* We conclude that the trial court did not clearly err in terminating respondent’s parental rights under MCL 712A.19b(3)(g), which provides for termination when “[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.”

The child was taken into care in October 2013 because respondent had a history of criminality and was incarcerated. Respondent was still in jail when the initial dispositional hearing was held and the service plan was adopted. The first caseworker planned to provide services and parenting time after respondent was released. After respondent was released on December 19, 2013, however, she only contacted the caseworker once, did not participate in

¹ Contrary to respondent’s argument, the record does not support that the trial court relied on MCL 712A.19b(3)(c)(ii) (other conditions exist that could have caused the child to come within the court’s jurisdiction and they have not been rectified) when terminating her parental rights.

services or submit to assessments, and did not visit the child. See *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003) (“a parent’s failure to comply with the parent-agency agreement is evidence of a parent’s failure to provide proper care and custody”). Respondent violated her probation and was arrested and lodged in jail on January 13, 2014. While respondent was incarcerated from January 13 through April 8, 2014, she could not participate in any services because she accepted a volunteer job. She completed questionnaires regarding parenting and substance abuse, which were provided to her by the first caseworker. Respondent was released again on April 9, 2014, but failed to attend two scheduled meetings with the first caseworker, did not participate in any services or submit to assessments, and did not visit the child while she was free. *Id.* On May 13, 2014, respondent consumed crack cocaine and was again arrested for violating her probation. She was ultimately sentenced to a minimum of one year and six months’ imprisonment, with credit for six months already served. Respondent was in prison at the time of termination and was unable to provide the child with housing or basic necessities. She failed to name any relatives who were able and willing to care for the child while she was incarcerated. Although respondent argues that the fact that she wrote letters to the child while she was incarcerated suggests that she could provide proper care and custody, she fails to acknowledge that she did not seek parenting time with the child when she was free. In sum, the record indicates that respondent was unable to provide proper care and custody at the time of termination. MCL 712A.19b(3)(g).

There is no evidence to support that respondent would be able to provide proper care and custody within a reasonable time. Respondent displayed a lack of commitment during the 11-month proceeding and her earliest release date from prison was May 19, 2015. The record indicates that respondent would then need to demonstrate sobriety and compliance with the service plan for at least another year before reunification could occur. The child, who was six years old at the time of termination, had been in care twice and spent at least 27 months of her life in care. The trial court’s finding that termination of respondent’s parental rights was proper pursuant to MCL 712A.19b(3)(g) does not leave us with a definite and firm conviction that a mistake has been made. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).²

In reaching this conclusion, we reject respondent’s argument that it was improper for the trial court to solely rely on her incarceration at the time of termination and her criminal history when terminating her parental rights. See *In re Mason*, 486 Mich 142, 160, 165; 782 NW2d 747 (2010) (holding that “termination of [the father’s] parental rights solely because of his incarceration” and “criminal history” was improper). We do so because review of the trial court’s oral ruling establishes that the trial court did not solely rely on respondent’s criminal history and incarceration to terminate her parental rights pursuant to MCL 712A.19b(3)(g).

We also reject respondent’s argument that petitioner failed to provide her with reasonable services to reunify her with the minor child. Respondent’s reasonable efforts argument is

² Because we have concluded that at least one ground for termination existed, we need not consider the additional grounds upon which the trial court based its decision. *In re HRC*, 286 Mich App at 461.

unpreserved, *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012), and we review it for plain error affecting substantial rights, *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). We have reviewed all of respondent's arguments that she was not provided with reasonable reunification services and find that they are unsupported by the record.

Respondent also challenges the trial court's best-interest ruling. "Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). We review this finding for clear error. *In re HRC*, 286 Mich App at 459. "In deciding whether termination is in a child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App at 41-42 (citations omitted). The trial court may also consider evidence that the child is not safe with the parent, is thriving in foster care, and that the foster care home can provide stability and permanence. *In re VanDalen*, 293 Mich App at 141.

The child was not bonded to respondent. In October 2013, the child was placed in care for a second time. Respondent failed to seek visitation with the child on the two occasions when she was free from incarceration. While respondent wrote the child letters while she was incarcerated, the child did not have an emotional reaction to the letters and never expressed a desire to communicate with respondent. The child wanted the foster mother, who she referred to as "mom," to adopt her. At the time of termination, the child had spent at least 27 months of her life in care and did not refer to respondent as her mother. Although respondent argues that the caseworkers improperly failed to facilitate a bond between her and the child, the record establishes that the lack of bond was the result of respondent's actions, i.e., violating her probation and failing to visit the child when able.

Respondent argues that she should have been given an additional six months to participate in services, but we must look to the best interests of the child, not respondent, including her need for stability. See *In re Trejo Minors*, 462 Mich 341, 364; 612 NW2d 407 (2000). Here, the child was six years old and required permanency and stability. Respondent was unable to provide this at the time of termination, and there is no indication that she would be able to do so in the future. And, contrary to respondent's argument, there is no basis to conclude that the foster mother would be unable to provide the permanency and stability that the child required. The child had been placed with the foster mother for the duration of the proceeding and was thriving. She was very bonded to the foster mother, who wished to adopt her. See *In re VanDalen*, 293 Mich App at 141. Accordingly, the trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests. *In re HRC*, 286 Mich App at 459.

Affirmed.

/s/ Jane M. Beckering
/s/ Jane E. Markey
/s/ Douglas B. Shapiro